

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
 )  
NICOR ENERGY, LLC )  
 ) No. 03-0193  
Petition to withdraw license )  
as an alternative retail )  
electric supplier. )  
Chicago, Illinois  
June 26, 2003

Met pursuant to notice at 11:00 a.m.

BEFORE :

MR. TERRENCE HILLIARD, Administrative Law Judge.

APPEARANCES:

ROWLAND & MOORE, by  
MR. STEPHEN J. MOORE  
77 West Wacker Drive, Suite 4600  
Chicago, Illinois 60601  
Appearing for Nicor Energy, LLC;

MR. STEVEN G. REVETHIS  
160 North LaSalle Street, Suite C-800  
Chicago, Illinois 60601  
Appearing for Staff.

SULLIVAN REPORTING COMPANY, by  
Julianne Murphy, RPR, CSR

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-direct</u>	<u>Re-cross</u>	<u>By Examiner</u>
Eric Schlaf	6	14			

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
JH 1-4		5
EPS 1-3		5

1 JUDGE HILLIARD: On behalf of the Illinois  
2 Commerce Commission, I call docket 03-0193, Nicor  
3 Energy, LLC, petition to withdraw license as an  
4 alternative retail electric suppliers.

5 Would the parties identify themselves for  
6 the record, please.

7 MR. MOORE: On behalf of Nicor Energy, LLC,  
8 Stephen Moore of the law firm of Rowland & Moore,  
9 77 West Wacker Drive, Suite 4600, Chicago, Illinois  
10 60601.

11 MR. REVETHIS: Steven G. Revethis, staff  
12 counsel, appearing on behalf of the Illinois  
13 Commerce Commission Staff, your Honor, 160 North  
14 LaSalle Street, Chicago, Illinois 60601.

15 JUDGE HILLIARD: Okay. What are we going do  
16 today, gentlemen?

17 MR. MOORE: We've filed our petition, and the  
18 Staff has requested that as supporting evidence for  
19 that that we introduce into the record responses  
20 that Nicor Energy had to three Staff data -- a set  
21 of data requests from Staff, three separate  
22 documents. And then I think Mr. Schlaf -- or

1 Dr. Schlaf also would like to make a statement.

2 MR. REVETHIS: That's a correct

3 characterization, your Honor. In fact, more

4 specifically we have -- it is our desire to put

5 into the record Staff data requests and responses

6 JH 1 through 4 and also EPS 1 through 3, your

7 Honor, at this time.

8 JUDGE HILLIARD: Okay. Are these -- have they

9 be filed electronically, or no?

10 MR. MOORE: No, they have not.

11 JUDGE HILLIARD: Do we have would the

12 appropriate numbers of copies?

13 MR. REVETHIS: Yes, I can provide them.

14 JUDGE HILLIARD: All right. Then there's no

15 objection?

16 MR. MOORE: No objection.

17 JUDGE HILLIARD: Okay. JH 1 to JH 4 and

18 responses to data requests EPS -- is it 1, 2, and

19 3?

20 MR. REVETHIS: That's correct, your Honor.

21 JUDGE HILLIARD: (Continuing.) -- will be

22 admitted into the record.

1       MR. REVETHIS: Just as they're labeled or would  
2       you like it just Staff Group Exhibit 1? How would  
3       you like that?

4       JUDGE HILLIARD: Whatever seems appropriate.

5       MR. REVETHIS: I think we're fine as they are --

6       JUDGE HILLIARD: That's fine.

7       MR. REVETHIS: -- because they're all identified  
8       individually, so ...

9       JUDGE HILLIARD: Fine.

10                   (Whereupon, JH 1 to 4 and EPS 1  
11                   to 3 were admitted into evidence as  
12                   of this date.)

13       MR. REVETHIS: If we may, at this time we  
14       would --

15       JUDGE HILLIARD: Like to call Mr. -- Dr. Schlaf?

16       MR. REVETHIS: That's correct, your Honor.  
17       Staff would like to make a statement.

18       JUDGE HILLIARD: Do we need to swear Dr. Schlaf  
19       in for this?

20       MR. REVETHIS: Yes, your Honor.

21                   (Witness sworn.)

22       JUDGE HILLIARD: Proceed.

1 MR. REVETHIS: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY

4 MR. REVETHIS:

5 Q. First of all, sir, would you kindly state  
6 your name, title, and business address for the  
7 record, if you would, please.

8 A. My name is Eric P. Schlaf, S-c-h-l-a-f. I  
9 am an economist in the energy division at the  
10 Commission. My business address is 527 East  
11 Capitol Avenue, Springfield, Illinois 62701.

12 Q. Dr. Schlaf, would you -- after reviewing  
13 the filing in this proceeding, would you like to  
14 make a statement regarding same?

15 A. Yes, I would.

16 Q. Would you kindly proceed to do so at this  
17 time.

18 A. Yes, thank you.

19 The purpose of Staff's statement is to  
20 describe Staff's conclusions with respect to its  
21 review of the Nicor Energy petition to rescind its  
22 alternative retail electric supplier certificate.

1 Staff believes that this petition demonstrates the  
2 problems that could arise when a major supplier  
3 decides to exit the market. Fortunately Nicor  
4 Energy has chosen to exit the market in a fairly  
5 orderly fashion and most of the potential problems  
6 associated with an abrupt market exit have not  
7 occurred.

8 Staff has reservations about Nicor  
9 Energy's return of a large number customers it had  
10 under contract to utility service but Staff does  
11 not oppose Nicor Energy's petition. Staff  
12 recommends, however, that the Commission approve --  
13 that the Commission's approval of the company's  
14 petition be conditioned on obtaining Nicor Energy's  
15 promise that it will promptly respond to customer  
16 complaints and inquiries using the procedures  
17 outlined in the company's response to Staff data JH  
18 3 and JH 4. Staff also recommends that the  
19 Commission order Nicor Energy to direct its trustee  
20 to work with the consumer services division to  
21 resolve disputes presented by Nicor Energy  
22 customers.

1           Nicor Energy filed its initial petition to  
2   rescind its ARES certificate on March 19th, 2003  
3   and amended its petition shortly thereafter on  
4   March 21st, 2003. According to the petitions, the  
5   company intended to gradually terminate its  
6   contracts with its customers. Most of its contracts  
7   expired during the May billing period, and those  
8   contracts were not renewed. However, a large  
9   number of contracts extended past the May 2003  
10   billing period, thus bringing up the question of  
11   how those customers would be served if Nicor  
12   Energy's petition to withdraw its certificate were  
13   granted.

14           It is my understanding that while Nicor  
15   Energy's second amended petition states that only  
16   several contracts extended past May 2003, the  
17   actual number was almost 500. Nicor's plan was to  
18   ask these nearly 500 customers for their consent to  
19   be transferred to another qualified supplier,  
20   Constellation NewEnergy. Those customers that gave  
21   consent would be served by Constellation. However,  
22   the customers that did not give their consent would



1 be continued to be served by Nicor Energy,  
2 apparently in name only.

3           This plan is described in the company's  
4 petition as follows in paragraph 7 of the company's  
5 petition: There are several other customers with  
6 annual electric consumption in excess of 15,000  
7 kilowatt hours who have contracts that extend  
8 beyond May 1st, 2003. Although Nicor's contracts  
9 with those customers allows Nicor to unilaterally  
10 assign their contracts to another ARES provider,  
11 Nicor has taken the additional step of sending  
12 those customers a letter requesting permission to  
13 transfer their accounts to Constellation.

14           The customers that provide consent will  
15 receive ARES service from Constellation. The  
16 customers that refuse to provide consent will  
17 continue to receive ARES service. That service  
18 will be nominally provided by Nicor, but pursuant  
19 to the service agreement between Nicor and  
20 Constellation, those customers will receive  
21 complete ARES services from Constellation. That's  
22 the end of the quotation.

1           Staff commented that the Commission, of  
2   course, could not permit a non-certificated  
3   supplier to provide electric power and energy to  
4   retail customers. In response to Staff's comments  
5   and concerns the company furnished information  
6   stating that it would not serve power and energy to  
7   retail customers after receiving Commission  
8   approval to rescind its certificate.

9       JUDGE HILLIARD: Sir, could you slow down a  
10   little bit so the court reporter can --

11       THE WITNESS: That's fine. Sorry.

12           Each of its former customers would be  
13   served by another ARES, most likely Constellation  
14   NewEnergy, or be returned to service by  
15   Commonwealth Edison. The customers that would be  
16   returned to ComEd service included customers on the  
17   Power Purchase Option Service, customers that no  
18   other ARES wished to serve, and customers served  
19   under multiyear contracts.

20           This information is contained in the  
21   company's response to Staff data requests EPS 01  
22   and EPS 02 and in Nicor Energy second amended

1 petition filed on June 9th, 2003. The company's  
2 information showed that the vast majority of the  
3 several thousand customers that the company had  
4 under contract were returned to Commonwealth  
5 Edison, rather being transferred or assigned to  
6 another ARES. These customers included both the  
7 customers for whom Nicor Energy was acting merely  
8 as an account agent and those customers for whom  
9 Nicor Energy was providing power and energy.

10           The customers also included the customers  
11 who did not provide their consent to be transferred  
12 to Constellation NewEnergy. Nicor Energy invoked  
13 the force majeure provisions in its contracts to  
14 enable it to return these customers to ComEd  
15 service. The nature of the force majeure is  
16 described in the company's response to Staff data  
17 request EPS 03.

18           Almost all of the several thousand  
19 customers returned to Commonwealth Edison were  
20 placed on ComEd's interim supply service, also  
21 known as ISS. The practice by an ARES that wishes  
22 to exit the retail electric business of placing

1 customers on interim supply service concerns Staff.  
2 ISS is not really designed to accommodate an ARES's  
3 desire to unload its on the delivery utility. ISS  
4 was originally designed to assist customers whose  
5 ARES suddenly and unexpectedly exited the supply  
6 business through a bankruptcy caused by a sudden  
7 spiking of wholesale electric prices, for example.

8 Eligibility was extended to delivery  
9 services customers who have no other source of  
10 supply. Customers subject to such problems would  
11 not be disconnected but instead would be assured of  
12 receiving a stable electric supply for a short  
13 period at prices approximating market rates.

14 Using interim supply services differently  
15 than the purpose for which it was created  
16 potentially raises costs for the utility obligated  
17 to perform its functions required under its  
18 tariffs. These functions include notifying the  
19 customers placed on that service of the supply  
20 options available to them and the consequences of  
21 failing to choose a supply option while receiving  
22 ISS. It may also cause customer confusion and

1 result in customer seeking advice from and possibly  
2 complaining to the Commission about their treatment  
3 by their electric supplier.

4           Staff acknowledges that procedures  
5 outlined in ComEd's interim supply service appeared  
6 to have operated as intended with a minimum of  
7 problems. Staff emphasizes, however, that the  
8 likelihood of problems actually occurring was  
9 increased because of the sheer volume of customers  
10 placed by Nicor Energy on ISS service.

11           Staff would also like note that the large  
12 number of customers who have been returned to  
13 Commonwealth Edison's interim supply service have  
14 only been receiving that service for a short time  
15 and that new problems may appear. Such problems  
16 may include billing problems that could arise after  
17 Nicor Energy relinquishes its certificate. Other  
18 problems may result from the company's use of force  
19 majeure provisions to terminate its contracts.

20           In recognition of these potential  
21 problems, Staff recommends that the Commission  
22 condition approval of its approval of Nicor

1 Energy's petition on Nicor Energy agreeing to use  
2 the procedures to deal with customer complaints and  
3 inquiries it has described in its response to Staff  
4 data requests JH 3 and JH 4. Staff also recommends  
5 that Nicor Energy ensure that its trustee cooperate  
6 with the Commission's consumers services division  
7 in resolving disputes. Staff's understanding is  
8 that Nicor Energy will agree to these conditions.

9 In summary, Staff recommends that the  
10 Commission approve Nicor Energy's second amended  
11 petition in Nicor Energy seeks to withdraw its  
12 alternative retail electric supplier certificate.  
13 Subjects to the conditions described earlier.

14 This concludes the Staff's statement.

15 JUDGE HILLIARD: Are there any questions?

16 MR. MOORE: Just one.

17 CROSS EXAMINATION

18 BY

19 MR. MOORE:

20 Q. Mr. Schlaf, now, you indicated the purpose  
21 of the ISS service -- the way it is currently  
22 written in terms of availability, the customers

1 that were transferred from Nicor to ComEd were  
2 eligible; is that correct? I mean, ComEd didn't  
3 break any rules?

4 **A.** I'm sorry. Did ComEd --

5 **Q.** Break any rules to accept these customers  
6 under ISS?

7 **A.** No. My -- I believe that the tariffs were  
8 followed basically to the letter.

9 MR. MOORE: Okay. I have no other questions.

10 JUDGE HILLIARD: Okay. Is there anything else?

11 MR. REVETHIS: I don't believe so, not from  
12 Staff.

13 MR. MOORE: No, there's not.

14 JUDGE HILLIARD: Then we'll mark this matter  
15 heard and taken.

16 HEARD & TAKEN ...

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